



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 30 2015

Thomas J. Spulak, Esq.
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1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707

RE: MUR 6748
Pharmaceutical Research and
Manufacturers of America

Dear Mr. Spulak:

On August 20, 2013, the Federal Election Commission (the "Commission") notified your client, Pharmaceutical Research and Manufacturers of America ("PhRMA") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). We received your Response on behalf of PhRMA to the complaint on November 26, 2013. On February 12, 2014, the Commission notified you that it received additional information from the complainant pertaining to the allegations in the complaint. We received your letter in response to that notification on February 21, 2014.

On December 17, 2015, the Commission found, on the basis of the information in the complaint and information that you provided, that there is no reason to believe that PhRMA violated the Act. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Emily Meyers, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Powers".

William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Hanabusa for Hawaii and George S. Yamamoto in **MUR 6748**
6 his official capacity as treasurer
7 Pharmaceutical Research and Manufacturers of
8 America
9 Christopher Raymond
10

11 **I. INTRODUCTION**

12 This matter was generated by a complaint alleging violations of the Federal
13 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by
14 Hanabusa for Hawaii and George S. Yamamoto in his official capacity as treasurer
15 (collectively, the "Committee"), and the Pharmaceutical Research and Manufacturers of
16 America ("PhRMA"). The Complaint alleges that the Committee or Representative
17 Colleen Hanabusa impermissibly coordinated with and solicited or directed funds from
18 PhRMA.

19 The available information in the record before the Commission, however,
20 indicates that PhRMA apparently did not make any contributions to the Committee or
21 pay for any coordinated communications on behalf of Hanabusa, and the Commission
22 thus finds no reason to believe that PhRMA made or the Committee received prohibited
23 contributions in violation of 52 U.S.C. § 30118(a). Furthermore, the Commission
24 exercises its prosecutorial discretion and dismisses the allegation that the Committee or
25 Hanabusa violated 52 U.S.C. § 30125(e)(1)(A) by soliciting or directing funds from
26 PhRMA.¹

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

1. Respondents

Hanabusa represented Hawaii's 1st Congressional District from January 2011 to January 2015. The Committee was Hanabusa's principal campaign committee for her 2014 U.S. Senate campaign.² Christopher Raymond served as Representative Hanabusa's deputy chief of staff from early 2010 until August 2013.³ Erica Slates was a volunteer who served as the Committee's Deputy National Finance Director.

PhRMA is an incorporated non-profit trade association organized under section 501(c)(6) of the Internal Revenue Code, and a "membership organization" under 11 C.F.R. § 114(e)(1).⁴ PhRMA states in its response, "In its role representing the interests of the . . . biopharmaceutical industry, PhRMA actively is involved in legislative advocacy."⁵ PhRMA sponsors a PAC registered with the Commission as a qualified non-party committee.⁶ Nick Shipley is PhRMA's Senior Director of Federal Affairs, and Robert Filippone is its Senior Vice President of Federal Affairs.

² Comm. Resp. at 2 (Sept. 30, 2013).

³ Decl. of Christopher Raymond ¶ 2 (Mar. 19, 2014) (attached to Raymond Resp. (Mar. 19, 2014)) ("Raymond Decl.").

⁴ PhRMA Resp. at 1 (Nov. 26, 2013).

⁵ *Id.*

⁶ *Id.*

2. The Committee's Communications with PhRMA

Raymond and Shipley met at a June 17, 2013 “meet and greet,”⁷ at which a drug company representative told Raymond that PhRMA might be interested in supporting the Committee.⁸ Later that day,⁹ Raymond e-mailed Shipley stating that “[t]here is no doubt the Congresswoman would benefit from the support of PhRMA — as she mentioned we are starting this race at a significant financial disadvantage[,]” and offering to schedule a breakfast meeting for Hanabusa, Shipley, and himself.¹⁰ Shipley replied, “I think we can talk more extensively in person about what we can do here to help support the Congresswoman[,]” and he suggested that Filippone join the breakfast meeting.¹¹ Raymond scheduled a breakfast meeting for Hanabusa, Shipley, Filippone, and himself at 8:30 A.M. on June 26, 2013, but he became ill and Slates attended in his stead.¹² The meeting lasted less than an hour.¹³

In response to the Complaint in this matter, Hanabusa, Shipley, Filippone, and Slates each provided either a sworn affidavit or a statement concerning the June 26 meeting. Although those statements present slightly different accounts of what was

⁷ Raymond Decl. ¶ 4; Aff. of Nick Shipley ¶ 3 (Nov. 22, 2013) (attached to PhRMA Resp.) (“Shipley Aff.”). Shipley corroborates that he first met Raymond at the June 17, 2013 “meet and greet,” but Shipley states that the event was hosted by one of PhRMA’s member companies for Representative Hanabusa, while Raymond contends that the “meet and greet” was organized by and for the Committee.

⁸ Raymond Decl. ¶ 4.

⁹ In all relevant e-mails currently in our possession, Raymond used his personal address,
See Raymond Decl., Att. at CR000001-09, 11-12; Compl. App. 1; Comm. Resp. Ex. A.

¹⁰ Raymond Decl. ¶ 6; *Id.*, Att. at CR000002; Shipley Aff. ¶¶ 4-5.

¹¹ Raymond Decl., Att. at CR000002.

¹² Raymond Decl. ¶ 8; *Id.*, Att. at CR000001.

¹³ Aff. of Robert Filippone ¶ 5 (Sept. 27, 2013) (attached to PhRMA Resp.) (“Filippone Aff.”).

1 discussed, all four state that the discussion included: (1) a general overview of the issues
2 that Hanabusa faced in the U.S. Senate race; (2) a description of ways that PhRMA has
3 supported candidates in the past; and (3) no commitments by PhRMA about what, if
4 anything, it might do to support the Committee.¹⁴

5 Hanabusa and Slates state that they listened to descriptions of ways that PhRMA
6 has supported candidates in the past, but did not respond.¹⁵ Shipley and Filippone state
7 that they discussed the possibility of PhRMA's PAC hosting a fundraiser on Hanabusa's
8 behalf, but neither Hanabusa's nor Slate's Declarations include such a statement.¹⁶
9 Shipley and Filippone also state that at the end of the meeting, at their request, Hanabusa
10 identified Jennifer Sabas and Peter Boylan as individuals unaffiliated with the campaign
11 with whom Shipley and Filippone might speak to gain additional understanding of
12 Hawaiian politics, but Hanabusa did not provide Sabas's or Boylan's contact
13 information.¹⁷ Shipley also recalled that Hanabusa suggested that he and Filippone
14 contact John Miyasato,¹⁸ the founder and managing principal of Crossroads Campaign
15 Solutions, a political consulting firm.¹⁹

¹⁴ Filippone Aff. ¶¶ 5-6; Shipley Aff. ¶ 6; Decl. of Congresswoman Colleen Hanabusa ¶ 3 (Sept. 26, 2013) (attached to Comm. Resp.) ("Hanabusa Decl."); Decl. of Erica Slates ¶ 3 (Apr. 18, 2013) (attached to Comm. Resp.) ("Slates Decl."). The descriptions of the breakfast meeting in Hanabusa's and Slates' Declarations are worded identically, but for the references to Slates in Hanabusa's Declaration and to Hanabusa in Slates' Declaration.

¹⁵ Hanabusa Decl. ¶ 3; Slates Decl. ¶ 3.

¹⁶ Filippone Aff. ¶¶ 5-6; Shipley Aff. ¶ 6.

¹⁷ Filippone Aff. ¶ 7; Shipley Aff. ¶ 7.

¹⁸ Shipley Aff. ¶ 7.

¹⁹ The Committee appears to have used Crossroads Campaign Solutions in Hanabusa's 2014 race for U.S. Senate, although Miyasato himself purportedly had "a reduced role[.]" Raymond Decl. ¶ 12.

1 All four of the attendees at the breakfast meeting state that Hanabusa and Slates
2 did not solicit and Shipley and Filippone did not commit PhRMA to provide any support
3 to the Committee. An exchange of text messages between Slates and Raymond
4 immediately following the meeting, however, suggests that PhRMA may have committed
5 to helping Hanabusa.²⁰ At 9:41 A.M. on June 26, 2013,²¹ moments after Hanabusa's
6 breakfast meeting with PhRMA concluded, Slates wrote in a text message to Raymond,
7 "Went very well – they're all in[.]" Raymond then inquired, "What type of money did
8 they promise?" Slates replied, "They'll do PAC bundling in addition to a couple other
9 things."²²

10 Later the same day, in response to Raymond's e-mail inquiring how the meeting
11 went, Shipley wrote:

12 The meeting went great, we very much want to (and will) help out the
13 Congresswoman. PhRMA can do the obvious PAC donations, but I think we are
14 going to look at doing some independent stuff as well. It was very helpful to
15 spend some time with the Congresswoman to understand what works and doesn't
16 work in Hawaiian politics and what message may be important.

17
18 There were a couple people that the Congresswoman encouraged us to connect
19 with, and I was hoping maybe you could give some contact info on them. First,
20 from Sen. Inouye's staff, she mentioned a former Chief of Staff back in Hawaii as
21 well as a former Communications Director in DC. Unfortunately I don't recall
22 the names offhand, but perhaps if you knew them you could pass them on and we
23 can reach out. Second, she also mentioned working with John Miyasato's
24 organization, Crossroads Campaigns, which I assume is working the race for you
25 guys as well; can you let me know who is the best contact over there to talk to?²³

²⁰ See Raymond Decl., Att. at CR000010.

²¹ Although some of Raymond's correspondence appears to have been sent from Hawaii's time zone, all of the time stamps for this text message exchange appear to be Eastern Daylight Time, the same time zone where the meeting occurred.

²² *Id.*

²³ Raymond Decl. ¶¶ 9, 11, Att. at CR000009.

1 According to Raymond and contemporaneous e-mails between him and Shipley,
2 on June 28, 2013, Raymond and Shipley had a brief conversation to discuss the
3 individuals that Shipley named in his e-mail and to identify who Shipley would be most
4 interested in contacting.²⁴ Raymond apparently believed that Shipley was interested in
5 contacting people associated with the campaign.²⁵ As such, later the same day Raymond
6 sent an e-mail to the personal e-mail accounts of Tanonaka; Peter Boylan (who
7 subsequently became the Committee's Communications Director); and Jennifer Sabas, a
8 volunteer adviser to the Committee, stating:

9 As I'm sure you've heard, PhRMA has committed to pulling together an
10 independent expenditure on CH's behalf. Nick Shipley (Government Relations
11 VP) and Bob [Filippone] (Senior VP) are the leads on this and would like to be
12 put in touch with folks on the campaign. After having talked with Nick about this
13 a little more, and based on our discussion, I came to the conclusion that it is the
14 three of you th[at] he would like to be in touch with. I am going to give him your
15 e-mail address so he can be in touch. I didn't feel comfortable giving out your
16 phone numbers.

17
18 Should you be contacted by Nick or Bob please know they are good democrats.
19 Let me know if you have any questions.²⁶
20

21 Raymond then sent Shipley the names and personal e-mail addresses for Tanonaka,
22 Sabas, and Boylan.²⁷ When Sabas replied to Raymond's e-mail and asked about

²⁴ Raymond Decl. ¶ 12. Neither Shipley's Affidavit nor PhRMA's Response refers to any telephonic communications with Raymond on or about June 28, 2013, or regarding the individuals Hanabusa identified at the breakfast meeting.

²⁵ See Raymond Decl., Att. at CR000009. Compare Shipley Aff. ¶ 12 (confirming that neither Sabas nor Miyasato had an official role in the race, nor a position with the Committee, before speaking with them on July 26, 2013), with Raymond Decl. ¶¶ 12, 13 (describing how Raymond assisted Shipley "in making contacts with certain persons associated with the Congresswoman's office or campaign" and directed Shipley to Rod Tanonaka, Hanabusa's Chief of Staff, instead of to Miyasato who "was being given a reduced role in the campaign, and . . . would not be a very good contact for getting information about the status of the campaign.").

²⁶ Copies of the e-mail are included at Appendix I to the Complaint, pages CR000011-12 of the Attachment to Raymond's Declaration, and Exhibit A of the Committee's Response.

PhRMA, Raymond replied, “My guess is they will do mid to high six digits (\$\$) in mailers on our behalf.”²⁸

3. The Committee Did Not Receive Any Contributions from PhRMA

No information before the Commission indicates that PhRMA made either independent expenditures for the Committee’s benefit or direct contributions to the Committee in the 2013-2014 election cycle. A review of the Commission’s database, moreover, does not reveal any reported independent expenditures supporting Hanabusa for the 2014 election.

B. Legal Analysis

1. Prohibited Corporate Contributions

The Act prohibits corporations and other organizations, including membership organizations, from making contributions from their general treasury funds in connection with any election of any candidate for federal office.²⁹ The Act also prohibits any candidate from knowingly accepting or receiving any prohibited “contribution.”³⁰

A “contribution” is “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”³¹ The term “anything of value” includes all in-kind contributions,³² and an expenditure made by any person “in cooperation, consultation, or concert, with, or at

²⁷ Raymond Decl. ¶ 16.

²⁸ *Id.* ¶ 15, Att. at CR000011.

²⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

³⁰ 52 U.S.C. § 30118(a).

³¹ *Id.* § 30101(8)(A)(i).

³² 11 C.F.R. § 100.52(d)(1).

1 the request or suggestion of, a candidate, his authorized political committees or their
2 agents” constitutes an in-kind contribution to that candidate.³³ Under Commission
3 regulations, an expenditure for a communication is coordinated — and therefore a
4 prohibited contribution — if it satisfies the three prongs of the coordination test:
5 payment, content, and conduct.³⁴

6 Here, it does not appear that PhRMA paid for any communications supporting
7 Hanabusa’s candidacy and therefore there were no communications to be coordinated.
8 The Commission thus finds no reason to believe that PhRMA or the Committee violated
9 52 U.S.C. § 30118(a).

10 2. Prohibited Solicited Contributions

11
12 The Act prohibits candidates or individuals holding federal office, and their
13 agents, from soliciting or directing “soft money,” that is, funds outside of the Act’s
14 prohibitions and limitations.³⁵ Commission regulations define “solicit” as “to ask,
15 request, or recommend, explicitly or implicitly, that another person make a contribution,
16 donation, transfer of funds, or otherwise provide anything of value.”³⁶ The regulations
17 define “direct” as “to guide, directly or indirectly, a person who has expressed an intent
18 to make a contribution, donation or transfer of funds, or otherwise provide anything of

³³ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20, 109.21(b).

³⁴ 11 C.F.R. § 109.21.

³⁵ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³⁶ 11 C.F.R. § 300.2(m).

1 value, by identifying a candidate, political committee or organization, for the receipt of
2 such funds, or things of value.”³⁷

3 Although Raymond’s contemporaneous discussions might suggest a possibility
4 that he or another agent of the Committee may have solicited a representative of PhRMA,
5 whether such a solicitation in fact occurred or whether the request or direction involved
6 permissible independent activity remains unclear. Regardless, PhRMA apparently never
7 made any contribution or expenditure to benefit the Committee. Under the circumstances
8 presented here, the Commission concludes that further administrative fact-finding
9 proceedings would not be an efficient use of the Commission’s resources. Accordingly,
10 the Commission exercises its prosecutorial discretion and dismisses the alleged violation
11 of 52 U.S.C. § 30125(e)(1)(A).

³⁷

Id. § 300.2(n).